

Message Text

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DRAFTED BY L/EUR:KSGUDGEON:NMC
APPROVED BY EUR/CAN:JROUSE
L/OES - MR. OXMAN
OES/EN/ENP - MR. SPIELMAN

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R 152214Z AUG 75
FM SECSTATE WASHDC
TO AMEMBASSY OTTAWA

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E.O. 11652: N/A

TAGS: SENV, CA

SUBJECT: POPLAR RIVER

REF: OTTAWA 3056

1. DEPT APPRECIATES COMPREHENSIVE REPORTING REFTEL. APPARENTLY BALL WILL REMAIN IN CANADIAN COURT UNTIL 22 AUGUST, AND GIVEN PROLONGED DELAY IN RESPONDING TO IJC DISCUSSIONS OF LAST APRIL, ONE MORE WEEK IS NOT CRITICAL.

2. DEPT IS PREPARED DELETE INTERIM MEASURES PARA IF THIS IS UNACCEPTABLE TO GOC, AND WOULD RESERVE OPTION OF SEPARATE LETTER PENDING SEPTEMBER MEETING ON WATER-RELATED ASPECTS OF SPC POPLAR PROJECT. LETTER OR LETTERS TO IJC WILL NOT CONSTITUTE A NEW REFERENCE TO COMMISSION; OPERATIVE REFERENCE IS THAT OF 12 JANUARY 1948, WHICH IS ADEQUATE BASIS FOR BOTH LONG RANGE AND INTERIM RECOMMENDATIONS TO ISSUE FROM THE IJC SUA SPONTE, WITHOUT ANY FURTHER CORRESPONDENCE FROM GOVERNMENTS (ASSUMING GOC AND PROVINCIAL LIMITED OFFICIAL USE
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COOPERATION ON BOARD). DEPT DOES NOT SHARE GOC'S VIEW THAT IJC BOARD NOT CAPABLE OF RESPONDING TO THIS REQUEST BY SPRING, ALTHOUGH CONTINUING DELAY ON GOC SIDE WILL MAKE THIS SELF-FULFILLING PROPHECY. NOTING ROBINSON COMMENTS

PARA 3 REFTTEL, DEPT PREPARED LIMIT INTERIM PROTECTIVE MEASURES REQUEST EXPLICITLY TO EXISTING USES. SUGGEST EMBASSY PROPOSE THIS APPROACH TO BRADY AND ROBINSON. USG PREPARED TO SUBSTITUTE "EXISTING USES" FOR WORD "INTERESTS" IN FIRST SENTENCE OF PARA COMMENCING "PARTICULAR URGENCY IS ATTACHED...".

3. DEPT SOMEWHAT BAFFLED BY ROBINSON REMARKS ON EQUITABLE APPORTIONMENT (PARA 4). EQUITABLE OF COURSE MEANS ONLY WHAT IS JUST OR FAIR UNDER ALL THE CIRCUMSTANCES, AND TERM APPEARS IN RECENT IJC REPORTS ON APPORTIONMENT QUESTIONS. THIS TERM ALSO IN CONSONANCE WITH DEVELOPING INTERNATIONAL LAW ON UTILIZATION OF TRANSBOUNDARY WATERS. TERM DOES NOT MEAN "EQUAL" AND AN EQUITABLE APPORTIONMENT MIGHT BE "90-10" DEPENDING ON A BALANCING OF ALL RELEVANT FACTORS. IT IS AMONGST THESE FACTORS, INCLUDING EXISTING AND PLANNED USES, THAT A CONFLICT MAY ARISE, BUT APPLYING THE PRINCIPLE OF EQUITABLE APPORTIONMENT DOES NOT PREJUDGE HOW SUCH CONFLICTS ARE RESOLVED IN EACH CASE (ALTHOUGH EXISTING USES WILL NORMALLY BE FAVORED OVER AT LEAST PURELY HYPOTHETICAL FUTURE USES). IF IT WOULD HELP GOC, DEPT PREPARED ACCEPT RECOMMENDATIONS FOR A "REASONABLE AND EQUITABLE" APPORTIONMENT (LAST SENTENCE, THIRD PARA OF DRAFT LETTER). SUGGEST IT MAY BE USEFUL SEEK TO CLARIFY GOC THINKING ON THIS POINT BEFORE THEIR MEETING WITH PROVINCE.

4. HELENA MEETING IS ON AS SCHEDULED, WITH REDUCED AGENDA OF OPENING REMARKS AND AIR QUALITY DISCUSSION. DEPT MEMORANDUM ON THIS REVISED AGENDA POUCHED EMBASSY ATTENTION RICHARD POST.

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